

Chapter 9

Missing Adults: Asylum Seekers and Human Trafficking

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Introduction

People who are forced to migrate across international borders include asylum seekers and those who are ‘trafficked’ for various forms of exploitation. This chapter will examine the association between going missing during the process of migration for adults seeking refuge from persecution – referred to in policy terms as ‘asylum seekers’ when awaiting the outcome of refugee status determination procedures – and adults who are ‘trafficked’ for exploitative purposes. To do this, systems of support and surveillance of asylum seekers throughout the process of seeking asylum are highlighted and contrasted to the clandestine character of trafficking into, within and out of the UK.

Adults fleeing persecution are legally defined within Article 1 of the 1951 United Nations Convention relating to the Status of Refugees (hereafter the 1951 Refugee Convention) as applying to any person who:

... owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, having a nationality and being outside the country of his former habitual residence ... is unable or, owing to such fear, is unwilling to return to it.

This UN Refugee Convention was finalised by European states in July 1951 and entered into force in April 1954, restricted at the time to people who became refugees prior to the events of 1951 within Europe. This European focus was made universal in October 1967 when a Protocol relating to the Status of Refugees came into force extending the temporal and geographical limitations of the 1951 Refugee Convention (Goodwin-Gill, 1996, 2014). The United Kingdom is party to both and in domestic legislation in 1993 – the Asylum and Immigration Appeals Act – incorporated the 1951 Refugee Convention into domestic law.

Adults who are trafficked are defined under a different legal arrangements adopted in 2000 – the Convention Against Transnational Organized Crime, supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children – the latter Protocol commonly referred to as the Palermo Protocol. This legal definition provided the first internationally agreed definition of human trafficking and in Article 3 defines those who are trafficked to be:

Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of

the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

This definition contains three interrelated yet distinct elements, the act (recruitment, transportation and transfer), means (use of violence, threats or other use of force or coercion) and purposes (a range of forms of exploitation which include sexual exploitation, forced labour and other practices similar to slavery or servitude) of trafficking. As such trafficking is seen as a process, not a one off national bounded event (Hynes, 2011). The Palermo Protocol was signed by the United Kingdom in December 2000, coming into force in February 2006. The United Kingdom also ratified the Council of Europe Convention on Action against Trafficking, becoming operational in April 2009.

These legal definitions and competing legal frameworks frame those who are seeking asylum from persecution and those who are trafficked for exploitative purposes separately. However, there is overlap, an example of which would be persons who claim asylum on the basis of the inherent persecution involved with being trafficked. A further confusion lies around the differences between ‘smuggling’ and ‘trafficking’ which, in recent months has played out in the Mediterranean where there has been a conflation between being ‘trafficked’ rather than ‘smuggled’. To be a refugee there is a need to be outside the country of the persons former habitual residence whereas to be trafficked includes those who are trafficked across borders and people trafficked within national boundaries.

Much of the literature also relates to either those seeking asylum or those trafficked (Anderson, 2012, 2014; Bloch and Schuster, 2005; Hynes, 2011; Lewis et al., 2009; Zetter et

al., 2003). Statistics are also recorded separately for people seeking asylum and those who have experienced trafficking. In 2014, there were 31,300¹ applications for asylum in the UK and 4,015² final nonEU applicants were granted refugee or another form of humanitarian status. In the same year, 2,340³ potential cases of trafficking were referred to a National Referral Mechanism which was introduced in 2009 in the UK, designed in part to help identify ‘victims’ of ‘trafficking’. Of these, 1,669 were adults and 671 ‘minors’⁴ with forms of exploitation for adults divided into ‘sexual exploitation’, ‘domestic servitude’, labour exploitation’, ‘organ harvesting’ and ‘unknown exploitation’.

Antitrafficking efforts run parallel to a broader immigration and asylum agenda that has seen an increasing tightening of policy and legislation since the mid 1990s (Bloch and Schuster, 2005; Bloch and Solomos, 2010; Hynes, 2009; Lewis, 2007). Since this time, the portrayal of asylum seekers as ‘bogus’ or ‘genuine’ claimants has entered public consciousness leading to narratives of ‘undeserving’ and ‘deserving’ refugees (Sales, 2002). Consequently, an appreciation of the more structural ‘harms’ of state asylum and immigration policy whereby further exploitation can occur and vulnerabilities be exacerbated, is also essential to an understanding of antitrafficking efforts (Anderson, 2012; O’Connell Davidson, 2013).

¹ UNHCR (2015), UNHCR Asylum Trends 2014: Levels and Trends in Industrialized Countries, Geneva: UNHCR.

² Source: Eurostat (online data code: migr_asydcfina)

³ National Crime Agency (2015) National Referral Mechanism Statistics – End of Year Summary 2014, NCA and UK Human Trafficking Centre (UKHTC).

⁴ 17 or under at the time of first claimed exploitation.

Definitional differences, distinct legal frameworks, separate recording of statistics, different literatures and policy agendas surrounding asylum and trafficking make looking at going missing during the two process complex. However, in practice, these populations overlap and distinctions become blurred in reporting and the lived realities of people. To unpick this, sections on people seeking asylum and people who have experienced trafficking will outline potential reasons and literature on going missing. A final section comparing the reasons for going missing will highlight the absence of literature⁵ on the interrelation between asylum, trafficking and going missing.

People Seeking Asylum

Permission to enter and remain in the UK can be sought for various reasons including joining a spouse, to study or to work. However, if fleeing persecution on any of the tenets of the 1951 Refugee Convention, asylum is a method of protection given by states, such as the UK. There are no legal routes available to seek asylum other than lodging a claim for asylum upon arrival into the UK. An asylum seeker may arrive ‘at port’ (airport, port or rail terminal) or ‘in country’ (in IND offices in Croydon or Liverpool). At present, all who wish to submit an application for asylum must travel to Croydon, to the Asylum Screening Unit⁶, no matter where their initial point of entry into the UK. Since April 2013, the government has

⁵ Searches conducted on SocINDEX, Applied Social Sciences Index and Abstracts (ASSIA), International Bibliography of the Social Sciences (IBSS) revealed no literature combining the three topics.

⁶ Those who are considered particularly vulnerable can on occasions be screened in regional offices but instances of this are rare.

introduced a new Asylum Operating Model wherein applications go through a triage process at the initial screening interview and are given ‘decision pathways’ based on the perceived simplicity or complexity of the case.

For asylum seekers, the trajectory of legislation and policy since the mid 1990s has been designed within an overarching framework of deterrence. Increasingly used, deterrence measures have included detention, compulsory dispersal to urban centres outside London and the Southeast of England, enforced destitution and deportation (Blinder, 2014; Bloch and Schuster, 2005; Garrett, 2005; Hynes, 2011; Lewis et al., 2007, 2008, 2013; Silverman and Hajela, 2015; Zetter et al., 2003).

In 2013, approximately 30,400 people entered detention under Immigration Act powers⁷ (Silverman and Hajela, 2015); 8,660 people who were removed or forced to depart were asylum cases (Blinder, 2014); 20,687 were in dispersal accommodation and 2,772 received subsistence only support (Refugee Council, 2014); and an unknown number enter into destitution for an unquantifiable period of time.

The UK immigration detention estate is one of the largest in Europe and holds between 2,000 and 3,500 migrants in detention at any given time (Silverman and Jajela, 2015). The rationale for detention includes reducing the risk of absconding. Asylum seekers can be detained following an initial interview if it is considered by the Home Office that the decision to grant or refuse asylum can be provided quickly. Campaigning groups and the United Nations High

⁷ The most common category of immigration detainees is people who have sought asylum in the UK.

Commission for Refugees (UNHCR) have argued that this process is highly inadequate given that victims of torture are unlikely to disclose details of their abuse during an initial screening interview. People can also be detained on arrival, upon presentation at an immigration office within the UK and during routine reporting.

Globally, there is growing evidence that detention of asylum seekers is associated with negative mental health outcomes, particularly in relation to depression, anxiety and Post Traumatic Stress Disorder (PTSD) (Filges et al., 2014; Physicians for Human Rights, 2003). Methodological difficulties and ethical considerations preclude studies based around randomised control trials (Filges et al., 2014) but decades of research into pre and postmigration trauma includes the negative impact of detention and potential of detention experiences to reactivate and exacerbate previous traumas (Medical Foundation for the Care of Victims of Torture, 1994).

The detention of children has been a particularly controversial aspect of UK asylum policy (Bail for Immigration Detainees (BiD), 2013; Crawley and Lester, 2005; Fazel and Stein, 2004). Since the Borders, Citizenship and Immigration Act of 2009 the UK Borders Agency has a duty to safeguard and promote the welfare of children. Research carried out post this Section 55 duty continues to document children being separated from parents during indefinite periods of detention (BiD, 2013).

Sigona and Hughes (2012) estimate that some 120,000 irregular migrant children live in the UK. These are children who are born in the UK or who have migrated to the UK at an early age who do not have a legal immigration status. Their study was exploratory and mainly

qualitative, focussing on interviewees from Afghanistan, Brazil, China, Jamaica, Nigeria and Kurds from Turkey, Iran and Iraq. Living without documentation – or being ‘undocumented’ – places children in positions of extreme vulnerability (Sigona and Hughes, 2012). They found that fear of detection and potential deportation by immigration authorities ‘played a central role in the everyday lives of migrants’ (Sigona and Hughes, 2012, p.41) and suggest that: ‘A major concern for parents is shielding their children from the negative consequences of a lack of status’ which include difficulties enrolling in school and access to healthcare (p. 41-42). The motivation to avoid detention by remaining invisible to authorities is an underresearched area, as is the impact this has on children.

Before the Asylum and Immigration Act 1999, asylum applicants were supported through the mainstream benefits system and the issue of asylum seekers going missing was therefore not a probability. However, following this Act, a new agency – the National Asylum Support Service (NASS) – was set up, providing a parallel welfare and support structure specifically for asylum seekers. Under ‘Section 95’ of the Act, asylum seekers are paid at a between 65 per cent and 70 per cent of the rate of income support provided to UK nationals (Boswell, 2001). Asylum seekers needing accommodation were dispersed across England by NASS. Surveillance mechanisms built into this policy response included checks by local authority, social and private landlords on the occupancy of accommodation, legal requirement on landlords to report to the Home Office if the occupant was more than 3 days away from accommodation provided through NASS, as well as the requirement that asylum seekers regularly report to Reporting Centres (Hynes, 2009, 2011). Incidents of asylum seekers going missing are therefore associated with opting out of an asylum process that offers little hope or perceived justice to those moving through it as well as a threat of detention if found to be

failing to comply with the conditions attached to receipt of accommodation. Since its introduction in April 2000 the compulsory dispersal of asylum seekers has entailed less accommodation provision provided by local authorities and social landlords, with large contracts now awarded exclusively to large companies such as SERCO, G4S and Clearell under the Home Office's Commercial and Operational Managers Procuring Asylum Support Services (COMPASS) contracts.

As outlined by Lewis (2007, 2009), destitution of asylum seekers is a persistent concern across the UK. As Lewis (2007) highlights, destitute asylum seekers rely on friends, charity and their own 'communities' for basic needs and are often forced to find undocumented and potentially exploitative work to survive. People at all stages of the asylum system have reportedly experienced destitution, including those awaiting a decision if unable to access support, those whose appeal rights have been exhausted but are unable to return to their country of origin and those who have been granted refugee or another form of leave to remain who have to leave their accommodation and enter mainstream welfare provision to access a National Insurance number (House of Commons, 2013). As Lewis (2007) found, periods of rough sleeping are common for some whose asylum cases have been refused and people remain in vulnerable positions for protracted periods. Blitz and Otero-Iglesias (2011) have argued that 'when denied state protection, refused asylum seekers endure an existence not unlike stateless people'. His study, conducted in Oxford and London, highlighted how refused asylum seekers and 'overstayers'⁸ lose their entitlement to protection and become de facto stateless. There is a distinct lack of research on what it means to be undocumented and how going missing relates to this.

⁸ The term 'overstayers' refers to people who have stayed longer than their visas allow.

Increasingly, private sector contractors control and maintain the oversight of asylum seekers, in many cases through to deportation. As of January 2015 there were 11 Immigration Removal Centres, four of which managed by the Prison Service and seven managed by private firms – Mitie, GEO, G4S and Serco – on contract to the Home Office (Silverman and Jajela, 2015). Deportation, ‘administrative removal’ and voluntary departures are categories within UK immigration rules, classified primarily by the method by which removal or departure takes place (Blinder, 2014). Beyond the known 8,660 asylum seekers who were removed or forced to depart the UK during 2013 it is unclear how many others remained invisible to authorities as a strategy of survival and avoidance of persecution on return.

On arrival into the UK, asylum seekers do not have the right to work and relationships with the informal economy are therefore largely unexplored. Literature is however emerging that demonstrates how refused asylum seekers remain in the UK with no right to work or recourse to public funds which again makes people susceptible to unscrupulous employers (Lewis, 2009; Lewis et al., 2013). Going missing in this instance relates to the need to survive and, potentially, work in insecure, difficult and dangerous contexts. Instances of forced labour amongst asylum seekers and refugees have, until recently, not been recognised (Lewis et al., 2013). This interfaces with the experiences of those who have been trafficked for the purposes of forced labour.

People who Have Experienced Trafficking

Trafficking is by its very character a clandestine phenomenon and the policy imperative is to identify people as trafficked to enable support and protection of 'victims' or 'survivors'. Remaining invisible, becoming undocumented and going missing from the view of services and authorities is consequently highly likely. In the UK, as outlined above, a relationship with asylum and immigration control is evident.

Research conducted in three South Eastern European countries (Brunovskis and Surtees, 2007) suggests that 'victims' of trafficking may decline or avoid support and assistance due to their personal circumstances (such as seeing assistance standing in the way of further migration), difficulties in protection systems (such as the 'one size fits all' nature of assistance provided) and differing social contexts and personal experiences (such as the stigma of receiving assistance, problems around identification and lack of trust in those providing assistance). Each of these reasons may result in a 'victim' of trafficking going missing in the eyes of authorities and those providing assistance.

In the UK, statistics available for those who are referred to a National Referral Mechanism show a range of exploitative explanations including being trafficked for sexual exploitation, labour exploitation, domestic servitude and a range of other exploitative practices (NCA, 2015). A new Modern Slavery Act which received Royal Assent in early 2015 in the UK has defined 'trafficking' and 'exploitation', provided for an Independent AntiSlavery Commissioner and outlined the protection of 'victims'. It is of note that, for children and young people, independent child trafficking advocates are one of the new provisions outlined in the Act.

For children, going missing from local authority care is a key indicator of potential trafficking and is explicitly incorporated into risk assessments such as the London Safeguarding Trafficked Children Toolkit. The issue of children going missing and the link to trafficking has been outlined in ‘grey’ literature (Pearce et al., 2009), some academic literature (Bokhari, 2008; ECPAT UK, 2007, 2009; Kelly and Bokhari, 2012; Pearce et al., 2013) and government reports where children were found to ‘go missing’ or ‘abscond’ within the first 48 hours of arrival into the UK when placed in temporary accommodation and remain missing thereafter (CEOP, 2007, 2009). In 2008 the Care Leavers’ Association surveyed 172 local authorities in England and Wales and found that 41 of these had children and young people who were missing from their care. The highest number of these were unaccompanied asylum seekers⁹. Given such evidence, plus the increasing disclosures of child sexual exploitation and trafficking in cities across the UK such as Rotherham, Manchester and Oxford in recent months it is of concern that some argue child trafficked to be a ‘moral panic’ that draws attention away from ‘more difficult issues confronting social work’ (Cree et al., 2014).

For adults who have experienced trafficking, there is no equivalent matrix and a lack of literature relating specifically to going missing. Seen initially as a problem surrounding sexual exploitation, trafficking debates in the UK now include other forms such as labour exploitation, forced labour, cannabis farming, domestic servitude, organ sale, forced begging and pickpocketing (Craig, 2014). Craig’s (2014) review of the contribution to research in understanding ‘modern slavery’ in the UK outlines three major reports in the ‘grey’ literature from a consortium of NGOs, the AntiTrafficking Monitoring Group (ATMG). Each of these

⁹ Further details: <http://www.careleavers.com/general/74-missing>

reports, *Wrong Kind of Victim*, *All Change* and *Hidden in Plain Sight*, progressively documents areas for improvement in prevention, identification and protection of those who have been trafficked. Individuals going missing due to flaws within the process of identification is implicit in these reports.

Debates around trafficking of adults in the UK have historically focused on sexual exploitation and are highly polarised (Anderson, 2014). On one side, feminists argue that 'sex work' should be legalised and a rights approach adopted (Andrijasevic, 2010; Doezma, 2010). On the other, feminists argue prostitution is a symptom of patriarchy and that voluntary consent is not possible. Agustin (2008) argues that the label of 'trafficking' invokes a victimising discourse and does not accurately describe those who do sex work. She also argues that 'helpers' and moral agendas surrounding 'rescuing' those involved deny agency and make those involved passive 'victims'.

Work on different forms of trafficking are now emerging. Human trafficking and forced labour are both said to be modern forms of slavery which sometimes overlap, but are not identical (Craig, 2014; Skrivankova, 2014). Research funded by the Joseph Rowntree Foundation (JRF) has resulted in a collection of independent studies on the nature, scale and scope of forced labour, including the work of Dwyer et al. (2011), Geddes et al. (2013) and Skrivankov (2010).

Dwyer et al. (2011) demonstrate the ways particular immigration statuses make people vulnerable to forced labour. A further study by this team into the precarious lives of asylum seekers and refugees illustrated for the first time how this group of migrants are 'susceptible

to exploitation in various forms of severely exploitative and, in some cases, forced labour in England.’ (Lewis et al., 2013). They found that the experience of forced labour is an assumed necessity for refugees and asylum seekers in order to meet the basic needs of themselves and their families with payment below the National Minimum Wage a ‘normalised reality’ for those with ‘compromised sociolegal status’ which ‘repeatedly pulled them back into precarious work.’. Geddes et al. (2013) provide a summarising report bringing evidence on policy, practice and law together. Whilst the body of JRF research challenged the notion that forced labour is a hidden phenomenon facets of this, when applied to those with insecure immigration status, could easily result in people remain invisible, staying hidden or ‘going missing’.

Skrivankov’s (2010) contribution outlines a continuum of exploitation between decent work (the optimum position) and forced labour (the most severe forms of labour exploitation). This continuum provides a framework for understanding the interaction between an individual’s vulnerability and the setting within which the individual works, is exploited, discovered and/or prosecuted. Staying hidden in such exploitative work relates closely to the defining characteristics of forced labour as per the ILOs 1930 Forced Labour Convention No.29. Facets of this include actual or threats of physical harm, restrictions of movement or confinement to the workplace, debt bondage, withholding of wages, retention of identify documents and/or threats of denunciations to the authorities. The issue of ‘debt bondage’ is often central to trafficking and fees paid to agents, brokers and others requirement repayment. Without the ability to work legally under the current immigration and asylum regime, recourse to the informal economy is one explanation as to why individuals may actively remain hidden from view. Such purposeful isolation at work was found to be a strong

indicator of forced labour as was the fear of deportation. The provision of accommodation, money and authorisation to work by employers are also ways in which the power imbalance can be maintained and become exploitative.

Asylum, Trafficking and ‘Going Missing’

The interface between asylum and trafficking is a relatively unexplored area (Morrison and Crosland, 2001; Lewis et al., 2013). It is clear that this interface warrants much further investigation. The link between going missing and asylum seekers being pushed into the informal economy remains, with the notable exception of Lewis et al (2013), largely unexplored. Adding the frame of ‘going missing’ into the territory of trafficking outlines a research area where there is, with the exception of some literature on children, no previous literature.

The creation of what has become termed a ‘hostile environment’ for asylum seekers will do little to assist in the identification of those who are trafficked; nor will it enable work on asylum seekers who go missing, become undocumented and subsequently are vulnerable to exploitation. Mistrust of asylum seekers undermines UK government policies that require engagement with different communities to address issues around trafficking, forced marriage and ‘honour’ crimes, as well as broader debates around social cohesion and social exclusion (Hynes, 2009). Trust is a key need for effecting such policies.

Both asylum seekers and people who are trafficked will continue to go missing in order to avoid detection by authorities and prevent themselves being detained or deported. For those

who become destitute having no recourse to public funds and, again, avoidance of detention will take steps to avoid being too visible. Taking up informal sector work, which may be highly exploitative, may become the only means of survival. As Lewis et al. (2013) suggest, because of their compromised sociolegal status asylum seekers and refugees are susceptible to exploitation in various forms, including forced labour, various forms of precarious work and, potentially, sexual exploitation. These forms of exploitation are also experienced by those trafficked into, within and out of the UK.

It is not known how many people go missing as a consequence of the different policies for asylum and trafficking. Becoming undocumented, 'going underground', becoming exploited are consequently unknowns in the literature. Asylum seekers may also wish to move away from the stigmatising labels of being an 'asylum seeker' (Hynes, 2011) and move towards an ordinary or normal life. Not knowing who to trust may affect all.

There are several unexplored reasons why people who have experienced trafficking may go missing. This may be due to debt incurred during journey to UK and the need to pay back agents. They may also go missing to escape from exploitation, the threat of exploitation and exploiters. Escaping from abusive histories, avoiding the shame and stigma associated with the label of 'trafficking' to live a normal life could be another reason. Avoiding detection from the authorities who frame such actions as 'absconding' and avoiding detection, detention and deportation could be another.

There is no comparative literature specifically in relation to missing adults moving through these processes and there is also a gap in knowledge about why asylum seekers and trafficked

persons go missing. Overall lack of cumulative or reliable data on asylum seekers or the more clandestine number of people who are trafficked means that there is also no accurate picture on which to base estimates of the numbers of people going missing in the process.

Conclusion

There are separate legal frameworks, definitions, bureaucratic labels, policy agendas and recording of those who have experienced persecution and are claiming asylum to those who have experienced trafficking. In practice, the distinction between the two populations is less distinct. As outlined above, the care and control of asylum seekers is a difficult process which can lead to exploitative circumstances. The clandestine character of trafficking into, within and out of the UK can overlap with the asylum and immigration regime. Visibility or invisibility to those who offer support, and to the authorities, is complex.

There are similarities and differences in the reasons for going missing that relate closely to such visibility or invisibility. With asylum, visibility is built into the system largely based on control and surveillance inherent in policies enacted to deter those seeking protection from persecution safety and rights under the 1951 Refugee Convention written into domestic law. With trafficking, by its very nature people remain invisible on arrival and only become visible to services and authorities if 'rescued' or presenting themselves for protection purposes.

The rationale in much of asylum policy is about reducing the risk of asylum seekers 'absconding', ensuring compliance, maintaining surveillance and control and keeping asylum

seekers visible to the various agencies and authorities involved. It is unsurprising that ‘strategies of invisibility’ (Malkki, 1995, p.155) are regarded by asylum seekers as positive coping strategies, essential for survival to ensure protection from persecution if removed to their countries of origin. This entails what Arendt (2004) refers to as ‘rightlessness’ – the loss of the right to have rights and entitlements afforded to others within a nation state – and leads to state harms and vulnerabilities that create spaces where exploitation can, and does, occur.

Being invisible or going missing may often be a rational decision to avoid detection or detention. This is an underresearched area, as is the impact this has on children. It is clear that there is further research to be done on the interface between asylum, trafficking and going missing.

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